



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.226 of 2017

and

C.M.P(MD)No.2621 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Maruthupathi Nagar, Managiri,
Karaikudi, Sivangai District, ...Appellant/Respondent

vs.

1.Packiyam
2.Suresh
3.Kala
4.Kavitha
5.Aandi ...Respondents/Petitioners

Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree made in M.C.O.P.No.438 of 2015, dated 28.01.2016 on the file of the Motor Accident Claims Tribunal/VI Additional District Court, Madurai.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.K.K.Senthil

JUDGMENT

Being aggrieved over the award passed by the Motor Accident Claims Tribunal- VI Additional District Court, Madurai in M.C.O.P.No.438 of 2015, dated 28.01.2016 , the Transport Corporation has filed the present appeal.

2.The appellant Transport Corporation is the respondent in M.C.O.P.No.438 of 2015, dated 28.01.2016, on the file of the Motor Accident Claims Tribunal-VI Additional District Court, Madurai. The respondents 1 to 5 are the claimants. The respondents 1 to 5 filed the claim petition in M.C.O.P.No.438 of 2015, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation for the death of the husband of the first respondent and father of the respondents 2 to 4 are son of the fifth respondent in the accident on 17.12.2014. By the award, dated 28.01.2016, the Tribunal awarded a sum of Rs.10,99,000/- (Rupees Ten Lakhs Ninety Nine Thousand only) as compensation.

3. Facts of the Case:-

According to the respondents, on 17.12.2014 at about 9.00 p.m., the first petitioner Packiam was travelling in a two wheeler along with her son from Thirupathur to her house and her husband deceased Selvam was riding another two wheeler bearing Registration No.TN-63-Z-1608 from Karaiyur to her house by keeping left side of the road and observing Traffic Rules. At that time, the driver of the bus bearing Registration No.TN-63-N-0946 belonging to the appellant drove the bus in a rash and negligent manner from opposite direction and dashed against the deceased and caused accident. Immediately, he was taken to the Government Hospital, Thirupathur and he died. The deceased was aged about 45 years at the time of accident and he was working as Carpenter and earning a sum of Rs.15,000/- per month. An FIR was registered against the driver of the bus belonging to the appellant. The accident was occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant. Therefore, they filed the claim petition, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation.

4.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the bus. The deceased was driving the motorcycle in a drunken mood and drove the vehicle in a Zig Zag manner and invited the accident and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent examined herself as P.W.1 and marked 3 documents as Ex.A1 to A.3. The appellant examined one Ashokan as R.W.1 and did not mark any documents.

6.The Tribunal, considering the evidence of P.W.1 and Ex.P.1 FIR and rejected the evidence of R.W.1-driver of the bus held that the driver of the bus belonging to the appellant is responsible for the accident and due to his negligence only, the accident had occurred. In the documents produced by the respondent, the Tribunal fixed the Notional income of the deceased as Rs.6,500/- per month following the ratio in the judgment reported in **2015(1) TNMAC 514** and awarded a total sum of Rs.10,99,000/- (Rupees Ten Lakhs Ninety Nine Thousand only) as compensation to the respondents in a different heads.

7.Aggrieved against the said award, the appellant-Transport Corporation has filed the present appeal.

8.The learned counsel for the appellant contended that the Tribunal erred in fixing the negligence on the driver of the bus and to see that the deceased was driving the motorcycle in a drunken mood.



9. Per contra, the learned counsel for the respondents/claimants contended that the Tribunal considered all the materials on record and awarded a just compensation under the different heads and there is no reason to set aside or modifying the said award.

10. I have heard the learned Counsel appearing for the appellant and the respondents and perused all the materials available on record.

11. The contention of the learned counsel for the appellant that the accident occurred only due to the rash and negligent driving of the deceased, is not supported by any acceptable evidence. On the other hand, in the post mortem report, it is stated that the deceased died only due to the multiple injuries sustained by him in the accident. The FIR is also registered only against the driver of the bus belonging to the appellant-R.W.1. The driver of the bus-R.W.1 did not lodge any complaint against the deceased. In the circumstances, the finding of the Tribunal that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant, is correct.

12. As far as quantum of compensation is concerned, the contention of the learned counsel for the appellant that the Tribunal awarded a sum of Rs.50,000/- towards loss of consortium to the first respondent and also another sum of Rs.30,000/- towards loss of love and affection is not correct, has considerable force. After awarding a sum of Rs.50,000/- towards loss of Consortium, the Tribunal erred in awarding a sum of Rs.30,000/- towards loss of love and affection and Rs.50,000/- towards loss of estate to the first respondent. In the circumstances, the sum awarded **Rs.50,000/-** towards loss of estate and **Rs.30,000/-** towards loss of love and affection are set aside and the amounts awarded under all other heads are confirmed.

13. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Transportation	5,000	5,000	confirmed
2.	Funeral Expenses	25,000	25000	confirmed
3.	Loss of Dependency	8,19,000	8,19,000	confirmed
4.	Loss of Love and affection	1,50,000 (30,000x5)	1,20,000 (30,000x4)	Reduced

5.	Loss of Future prospects and loss of Estate	50,000	-	deducted
6.	Loss of Consortium of 1 st petitioner	50,000	50,000	confirmed
	Total	10,99,000	Rs.10,19,000	By reducing a sum of Rs.80,000/-

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.10,99,000/- (Rupees Ten lakhs Ninety Nine Thousand only) to a sum of **Rs.10,19,000/-** (Rupees Ten Lakhs Nineteen Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The respondents 1 to 5/claimants are directed to submit their Savings Bank Account Detail along with the copy of their passbooks to the Tribunal **forthwith**;

(iii) The appellant/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.438 of 2015, on the file of the Motor Accidents Claims Tribunal-cum-VI Additional District Court, Madurai, within a period of **twelve weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the respondents 1 to 5/claimants, through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter**; and

(v) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal

VI Additional District Court, Madurai.

+1 cc to Mr.K.K.Senthil, Advocate, SR.No.16992

+1 cc to Mr.P.Prabhakaran, Advocate, SR.No.17269

**C.M.A(MD) .No.226 of 2017
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